

STC NEWSLETTER

State Tax Commission

March 2005

Governor Blunt Names Davis Chairman

Governor Matt Blunt has named Bruce Davis Chairman of the State Tax Commission. Bruce, the sole Republican member of the Commission, began with the agency in 1984 as Administrative Secretary. In 1990, then Chairman Ralph Smith resigned from the Commission to work in Governor Ashcroft's office, and the Governor appointed Bruce to complete the remainder of Ralph's term. Since 1990, Bruce has served on the State Tax Commission under five different governors.

Chairman Davis earned a bachelor's degree in 1975 at Westminster College, and prior to his employment with the State Tax Commission, worked for the Department of Revenue. Bruce, originally from Boonville, now resides in Columbia with his wife Mary and sons Trevor and Austin.

Assessors Twitty and McQuitty Resign

Jean Twitty, Assessor of Greene County and Christine McQuitty, Assessor of Platte County, each tendered their resignations effective January 31, 2005. Both assessors administered assessment programs in growing first class counties and both declined to run for re-election in 2004.

Jean was first elected in 1992, and replaced the retiring assessor LaRue Savage. Chris was first elected in 1996, and took office following the retirement of Betty Gregoire. Coincidentally, both are succeeded by employees of their offices. In Greene County, Rick Kessinger is the new assessor, and in Platte County, Lisa Pope performs that role.

The assessment community will miss such talented women as Jean and Chris, and we wish them all the best.

Supreme Court Decides Equipment Situs

The Supreme Court of Missouri has affirmed the assessment of personal property (highway construction equipment), which is based in another county, but situated in the assessing county during the construction project. On January 1, 2001, the J. H. Berra Construction Co., Inc. (Berra), owned heavy equipment located in Jefferson County, where it was used in a road construction project. The Jefferson County Assessor, Randy Holman, assessed the personal property and Berra appealed, asserting that the equipment was based in St. Louis County and had only a temporary presence in Jefferson County. The State Tax Commission agreed with the assessor that the equipment was subject to taxation in Jefferson County. On judicial review, the circuit court affirmed the Commission, and the construction company appealed the matter to the Missouri Supreme Court.

The court, citing section 137.095, noted that corporate-owned personal property controlled by Chapter 390, such as over-the-road trucks, must be assessed where it is based, but that other corporate-owned personal property must be assessed where it is situated. The court stated:

"The commission correctly found that the amended version of section 137.095 clearly contemplates that there can be a difference between where a piece of property is "situated" and where a piece of property is based. In particular, unless the property is regulated pursuant to Chapter 390, the correct analysis for tax purposes is to determine where the property is "situated," not where it is based. Because the equipment at issue in this case is not property regulated pursuant to Chapter 390, the fact that it is based in St. Louis County, where Berra operates its corporate headquarters, does not preclude it from being "situated" in some other county for tax purposes."

AHC Approves Assessor's Plan

The Administrative Hearing Commission (AHC) issued a decision, written by Commissioner John Kopp, on February 1, 2005 approving the 2004-2005 assessment maintenance plan of Ripley County Assessor, Tom Skaggs. The AHC concluded that because the Ripley County Commission (County) had not filed an alternative plan by February first, the assessor's plan, including the budget submitted as part of that plan, was approved as a matter of law.

The Assessor's Plan, submitted on January 4, 2004, included the transfer of \$19,848 from the general revenue (GR) fund to the assessment fund. The County budgeted \$7,049 to be transferred from GR to the assessment fund, but the average contribution from GR over the prior three years had been \$17,233. Section 137.115.1, RSMo required the County to approve the assessor's plan or submit an alternative plan to the State Tax Commission by February 1, 2004. The County disagreed with the amount proposed by the Assessor, but did not submit an alternative plan. The State Tax Commission (STC) encouraged the Assessor and County to come to an agreement, but they did not immediately approve the asses-

(See "Skaggs" on page 4)

STATE TAX COMMISSION OF MISSOURI

P.O. Box 146
Jefferson City, Missouri 65102-0146
Telephone: 573-751-2414
Fax: 573-751-1341
<http://www.dor.mo.gov/stc>

Commissioners
Bruce E. Davis, Chairman
Sam Leake, Commissioner
Jennifer Tidwell, Commissioner

R. Randall Turley, Chief Counsel

Sandy Wankum, Editor

Featuring...



David Huff

Iron County Assessor David Huff was born in St. Louis, Missouri and raised in Annapolis. He graduated from South Iron High School in 1977 and attended Southeast Missouri State University in Cape Girardeau. On July 24, 1982, he married Cheryl at the Redford Church of the Nazarene in Redford, Missouri—the church they still attend. They have two sons. The oldest son, Kyle, who works construction, is married to Destiny and they are expecting their first child on July 9, 2005. His youngest son, Cody, is a Junior at South Iron High School and plans to attend Linn State Technical College. Dave was first elected assessor in 1988, and took office in 1989, and is the past president of the East Central Missouri Assessors' Association. He previously worked as a pipe fitter for Local 351.

STORK REPORT

Stacey Jacobs, who works in the Commission's Administration Section, and her husband, Hurley welcomed son Hurley Jacobs, Jr. into their family on February 15, 2005. Hurley Jr. weighed 9 lbs. 9 oz. He has one sister, Sadie, who is three years old.

DAVID'S LIGHTER SIDE

- As a child, What did you want to be when you grew up? A Construction Worker
- Favorite Subject in High School--Math
- Most Influential Mentors--My parents, Johnnie and Evelyn Huff
- Favorite Movie of All Time--Lonesome Dove
- Hobbies—Hunting, fishing, and farming.
- Community Involvement—Arcadia Valley Lions Club Rodeo

- Most Embarrassing Moment--One Saturday morning while campaigning, I walked up to the front door of a house and knocked on the door. I had that odd feeling that something was watching me. I turned and saw a large pit bull dog walking toward me. Not taking my eyes off the dog, I reached for the doorknob. Unbeknownst to me, a lady still in her nightgown had the door opened and I almost got a hold of something other than the doorknob. See me at the conference and I will finish the story. [Editor's note: We hope he did not take a turn for the worse.]
- Most people don't know that I . . . someday would like to be an auctioneer.
- Accomplishment I'm most proud of—Cheryl and I have raised (for the lack of a better term) two good kids.

Interesting Taxpayer Story—An old man came in the office every day for a week talking to my mapper. He had a land dispute with his neighbor. Things weren't going well. On Friday, the very angry old man came in and insisted to see the assessor. My mapper directed him to my office. He had on bibbed overalls and a coat. He sat down and leaned toward me while reaching in his coat and said, "I've got something for you!" As he pulled his hand out of his coat, I shoved back in my chair and started for him—expecting him to pull out a gun. He produced an envelope and said, "I got me a lawyer." Instead of grabbing him, I stuck my hand out, shook his hand, and said with a smile, "Good for you!" He never knew I thought he had a gun.



Bob Peck

As an Appraisal Specialist for the State Tax Commission, Bob Peck is one of the most seasoned of the Commission's employees. Bob started with the Commission in March of 1981 as an "Equalization Field Person" and joined the Ratio Section in September of 1982. Prior to working for the STC, he was a staff appraiser for a Kansas City, Kansas savings and loan; a manager of the loan and housing section of the Community Development Department for the City of Kansas City, Kansas; and was an appraiser for a realtor/appraiser. Bob was born and raised in Kansas City, Kansas, and attended Wyandotte High School there. He received his Bachelor of Science degree in Business Administration from Kansas State College (now Kansas State University) in Pittsburg, Kansas. He and his wife, Mary Ruth, were married on June 29, 1974, and Bob has two stepdaughters, Amy and Jenni, and five grandchildren.

BOB'S LIGHTER SIDE

- As a child, what did you want to be when you grew up? When I was young, I didn't know what I wanted to be when I grew up, and I still don't!
- Favorite Subject in High School—Besides lunch and gym class, I really liked chemistry and physics. The class I most dreaded was speech and debate.
- Hobbies—Fishing and Gardening
- Additional Information You'd Like to Provide: I'm really kind of a boring person!!

PRIOR DECISION MUST BE BASIS FOR SUBSEQUENT ASSESSMENT

A Taney County Circuit Court has ruled that section 137.345, RSMo requires an assessor in a first class county, when there has been a decision of the State Tax Commission or a court, to use that decision as a basis for subsequent assessments. Judge Eiffert issued a Writ of Mandamus instructing the assessor to comply with sections 137.345.5 and 137.076, RSMo. The Judge stated, in part, that the assessor was to comply “by basing any future assessments of properties that have been successfully appealed to the State Tax Commission on the appraised values established by the Commission and to provide his calculations of any adjustments or changes in those values.”

Section 137.345.5, which applies only to first class counties, reads:

In every instance where a taxpayer has appealed to the board of equalization or the state tax commission the assessment of the taxpayer's property, real or personal, and that appeal has been successful, then in the next following and all subsequent years the basis upon which the assessor must base future assessments of the subject property shall be the basis established by the successful appeal and any increases must be established from that basis.

This language has been in place for over ten years. For several assessment cycles, the parties made little or no mention of it. Recently, however, attorneys for the taxpayers have directed the Commission's attention to the statute, and sought relief based upon allegations that the assessor failed to comply with these provisions.

The Commission's view is that assessors must use prior decisions as a basis of assessment in subsequent years, but that subsection 137.345.5 must be harmonized with other statutes, such as section 137.115.1, relating to assessment, which mandate that the Assessor assess residential property based upon its true value in money in each assessment cycle. The overriding standard that must be met in valuing property for assessment purposes is the true value in money of the subject property. Section 137.345.5 cannot be read in such a way that in a subsequent assessment cycle property is artificially assessed at a value that does not reflect the fair market value of the property.¹

Assessors in first class counties with repeated appeals on the same property should be aware of this issue. The Commission recommends that county appraisers who value property subsequent to a Commission or court decision use that decision as the basis for the new assessment and, if the new assessment differs from the decision, explain and document how and why the value was adjusted.

¹The Commission has ruled accordingly. See, *Allied Health Care et al. v. Daly*, STC #01-20267 et al (Issued November 19, 2003); *Western Wire Products v. Holman*, STC # 01-34004 (Issued June 3, 2003); *McCarthy v. Holman*, STC #01-34016 and 01-3401 (Issued May 15, 2003); and *Burkemper v. Muehlheausler*, STC Appeal #01-10587 (Issued March 20, 2002).

SUPREME COURT DECIDES CASINO CASE

A journey that began with an assessment in 1999 ended on March 1, 2005 for Pemiscot County Assessor Donna Snider when the Missouri Supreme Court found in her favor in the assessment of a casino's real and personal property. In *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, Slip.Op. SC86181 (Mo. March 1, 2005), the Court held that there is a presumption the assessor's value is correct, that the highest and best use of the property is as a casino, and that the cost approach is the proper method for valuing the property considering the valuation evidence on the record.

The State Tax Commission, reasoning that the casino license cannot be included in the value and that such a license is restricted, found the highest and best use of the property was as typical commercial property. The STC reduced the market value of the real estate from \$11,970,280 to \$5,113,280, and the personal property, including the boat and accompanying barge, from \$17,210,160 to \$4,237,791. The STC decision was affirmed by the Pemiscot County Circuit Court and the Southern District Court of Appeals, and then appealed by the assessor to the Missouri Supreme Court.

The decision took exception to the STC's highest and best use analysis, which resulted in the casino being valued as mere commercial property. The Court framed the issue as whether one type of commercial real property may be valued based on something less than its highest and best use while all other commercial property is valued at its highest and best use. The Court found that the highest and best use was as a casino and that it was not constitutionally permissible to value the casino property at less than its highest and best use. The decision went on to say that rental of casino property was virtually unheard of, so the income approach was not appropriate, and that comparable sales were so limited as to render them of no use. Consequently, the taxpayer failed to present substantial and persuasive evidence to rebut the presumption of correctness, and the assessor's values must prevail.

Similarly, with the personal property, the court said the assessor's value was presumed correct and that Aztar failed to carry its burden of showing that the assessor was incorrect and the State Tax Commission “erred in applying a criterion other than the property's highest and best use.” The court made no mention of the language found in 138.431, RSMo stating, “There shall be no presumption that the assessor's valuation is correct.”

The decision may be accessed through the Supreme Court's website at: <http://www.osca.state.mo.us/sup/index.nsf?OpenDatabase>, or contact Randy Turley at 573-751-2414.

("Skaggs" continued from page 1)

sor's plan. Because no plan had been approved by the State Tax Commission and no settlement could be reached, Mr. Skaggs petitioned the Administrative Hearing Commission to resolve the dispute over the budget section of the plan.

The County argued that the AHC should disregard the Assessor's plan because it was not filed on or before January first as required by section 137.115.1, RSMo. The AHC found that the statute provided no penalty for missing the deadline, so the deadline was merely directory and not mandatory.

The County further contended that a letter dated July 6, 2004, in which the State Tax Commission approved the Assessor's plan, but makes no decision on the budget, is not a valid approval. The AHC agreed because the letter was written after the action of the AHC commenced, and at that point, the AHC, not the STC, had jurisdiction over the matter.

The County also argued that the budget to support the assessment plan, i.e., the assessor's office budget, is not a part of the plan. The AHC found that in the language of sections 137.720 and 137.750, RSMo, the plan forms used by the STC, and the actions of the County all indicate the budget is a part of the plan. The decision pointed out that the County did not approve the Assessor's plan solely due to the budget dispute—lending credence to the belief that the budget was a part of the plan.

The AHC decision swept aside the County's allegations that the Assessor runs his office unwisely and that he should only be budgeted what he needs to run the office. The decision said the allegation is moot, because the County failed to offer an alternative plan and the Assessor's is deemed approved. Further, the decision found that even if the AHC had considered the argument, the County "failed to offer convincing evidence to support such allegations."

Finally, the AHC addressed this language of 137.115.1:

"The county governing body shall approve and forward such plan or its alternative to the plan to the state tax commission by February first. If the county

governing body fails to forward the plan or its alternative to the plan to the state tax commission by February first, the assessor's plan shall be considered approved by the county governing body."

The decision stated that unlike the provisions relating to the Assessor and the State Tax Commission, this language "plainly provides approval by operation of law when the County Commission approves no plan by February 1." The AHC concluded:

We approve the Assessor's Plan, including a transfer of \$19,848 from the Ripley County general revenue to the Assessment Fund.

The ruling was not appealed to the Circuit Court.

AG LAND VALUES UNCHANGED

Ag land values will remain unchanged for the 2005/2006 assessment cycle. The Commission will be making recommendations to the General Assembly in December, 2005 for agricultural land values to be used during the 2007/2008 assessment cycle. The 2005/2006 values are:

Grade #1	\$985
Grade #2	\$810
Grade #3	\$615
Grade #4	\$385
Grade #5	\$195
Grade #6	\$150
Grade #7	\$75
Grade #8	\$30



Assessors attending the 2005 Livestock Committee meeting: standing left to right, Jerry Overkamp, Shawn Ordway, Gary Hostetter, Roger Harrison, Jim Strahan; seated left to right, David Tunnel, Jim Jones and Don Steen.

2005 LIVESTOCK MINIMUMS

The Livestock Committee met in January at the Commission's office in Jefferson City to set the 2005 minimum values on livestock. These minimum values are:

Cattle: Calves (300-600 lbs)	\$45.00	Hogs: Sows/Boars (400 lbs)	\$15.00
Yearlings (600 lbs +)	60.00	Barrows/Gilts (250 lbs)	10.00
Cows/Bulls	60.00	Pigs (90 lbs)	6.00
Sheep: Slaughter Lambs (120 lbs)	\$10.00		
Replacement Ewes (150 lbs)	8.00		
Feeder Lambs	8.00		
Horses, Colts and Ponies:	\$50.00		
Poultry: Broilers	\$.10		
Breeding Chickens/Layers	.30		
Turkeys	.40		